

REMARKS:

Claims 2, 4-12, 15-23, 25, 32, 36-40, 44-49 and 52-63 are presented for examination, with claims 2, 4, 6, 10, 15, 21, 25, 32, 36-40, 44 and 45 having been amended hereby and claims 1, 3, 13, 14, 24, 26-31, 33-35, 41-43, 50 and 51 having been cancelled, without prejudice or disclaimer.

To begin with, notice is respectfully taken of the Examiner's indication on page 2 of the February 9, 2004 Office Action that claims 5, 7-9, 18-20, 29, 32, 36-40, 44 and 51 recite allowable subject matter.

In this regard, the Examiner's attention is directed to the fact that each of claims 32, 36-40 and 44 has been rewritten in independent form including all of the limitations of the base claim and any intervening claims. Thus, it is respectfully submitted that these claims 32, 36-40 and 44 are now clearly in condition for allowance.

Further, the Examiner's attention is directed to the fact that each of claims 5, 7-9 and 18-20 depends from amended independent claim 2. As discussed in detail below, amended independent claim 2 has been amended hereby so as to no longer be coextensive in scope with claims of U.S. Patent No. 6,319,286. Thus, it is respectfully submitted that these claims 5, 7-9 and 18-20 are now clearly in condition for allowance.

Further still, the Examiner's attention is directed to the fact that claim 29 has been cancelled and that the subject matter of claim 29 (which had depended from claim 25) has been added to claim 25. Thus, it is respectfully submitted that claim 25 is now clearly in condition for allowance.

Further still, the Examiner's attention is directed to the fact that claims 50 and 51 have been cancelled and that the subject matter of claims 50 and 51 (which had depended, directly or indirectly, from claim 45) has been added to claim 45. Thus, it is respectfully submitted that claim 45 is now clearly in condition for allowance.

Reconsideration is respectfully requested of the rejection of claims 2, 4, 6, 10-12, 15-17, 21-23, 25, 45-49 and 52-63 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4, 6, 10-17, 21-28, 30, 31, 33-35, 41-43, 45-50 and 52-63 of U.S. Patent No. 6,319,286.

Regarding claim 2, it is noted that this claim has been amended hereby to explicitly recite that the distal segment includes a bone engaging outer surface portion. Thus, it is respectfully submitted that this amended claim 2 is no longer coextensive in scope with claim 2 of U.S. Patent No. 6,319,286.

Regarding claims 4, 6, 10-12, 15-17 and 21-23, it is noted that each of these claims depends (directly or indirectly) from amended claim 2. Thus, it is respectfully submitted that these claims 4, 6, 10-12, 15-17 and 21-23 are now in condition for allowance.

Regarding claim 25, it is noted (as discussed above) that claim 29 (which the Examiner has indicated as reciting allowable subject matter) has been cancelled and that the subject matter of claim 29 (which had depended from claim 25) has been added to claim 25. Thus, it is respectfully submitted that claim 25 is now clearly in condition for allowance.

Regarding claim 45, it is noted (as discussed above) that claims 50 and 51 (the latter of which the Examiner has indicated as reciting allowable subject matter) have been cancelled and that the subject matter of claims 50 and 51 (which had depended, directly or indirectly, from claim 45) has been added to claim 45. Thus, it is respectfully submitted that claim 45 is now clearly in condition for allowance.


Finally, regarding claims 46-49 and 52-63, it is noted that each of these claims depends (directly or indirectly) from amended claim 45. Thus, it is respectfully submitted that these claims 46-49 and 52-63 are now in condition for allowance.

Therefore, it is respectfully submitted that the rejection of claims 2, 4, 6, 10-12, 15-17, 21-23, 25, 45-49 and 52-63 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4, 6, 10-17, 21-28, 30, 31, 33-35, 41-43, 45-50 and 52-63 of U.S. Patent No. 6,319,286 has been overcome.

Accordingly, it is respectfully submitted that each rejection raised by the Examiner in the February 9, 2004 Office Action has been overcome and that the above-identified application is now in condition for allowance.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
GREENBERG TRAURIG

By: 
Matthew B. Tropper
Registration No. 37,457

Dated: May 7, 2004

Mailing Address:
GREENBERG TRAURIG
885 Third Avenue
New York, New York 10022
(212) 801-2100
Facsimile: (212) 688-2449